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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION  
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12 **STATE OF CALIFORNIA et al.;**

13 Plaintiffs,

14 v.

15 **DONALD J. TRUMP, in his official capacity**  
16 **as President of the United States of America**  
**et al.;**

17 Defendants.  
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Case No. 4:19-cv-00872-HSG

**[PROPOSED] ORDER GRANTING  
PLAINTIFF STATES OF CALIFORNIA,  
COLORADO, HAWAII, MARYLAND,  
NEW MEXICO, NEW YORK, OREGON,  
VIRGINIA, AND WISCONSIN'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT REGARDING SECTION  
2808 AND NEPA**

Date: November 20, 2019  
Time: 10:00 am  
Judge: Honorable Haywood S. Gilliam,  
Jr.  
Trial Date: None Set  
Action Filed: February 18, 2019

On October 11, 2019, Plaintiff States of California, Colorado, Hawaii, Maryland, New Mexico, New York, Oregon, Virginia, and Wisconsin (the States) filed a Motion for Partial Summary Judgment (Motion) regarding Defendants' use of 10 U.S.C. § 2808 for the construction of barrier projects on the border between the United States and Mexico and Defendants' violation of the National Environmental Policy Act with respect to barrier projects funded under 10 U.S.C. § 2808 and 10 U.S.C. § 284. On October 25, 2019, the Defendants filed a cross-motion for summary judgment (Defendants' Cross-Motion). The Court has considered the States' Motion and documents filed therewith, Defendants' Cross-Motion and documents filed therewith, and all of the papers on file in this action, and hereby GRANTS the States' Motion, DENIES Defendants' Cross-Motion, and enters judgment in the States' favor as to each of their claims for relief on the grounds that the undisputed evidence shows that:

1. On September 3, 2019, the Secretary of Defense authorized the Department of the Army to spend \$3.6 billion originally intended for military construction projects on 11 border barrier projects under 10 U.S.C. § 2808. The States' Motion addresses 17 defunded projects within the States as listed below:

State	Location Title	Line Item Title	Amount
California	Channel Islands ANGS	Construct C-130J Flight Simulator Facility	\$8,000,000
Colorado	Peterson AFB	Space Control Facility	\$8,000,000
Hawaii	Joint Base Pearl Harbor-Hickam	Consolidated Training Facility	\$5,500,000
	Kaneohe Bay	Security Improvements Mokapu Gate	\$26,492,000
Maryland	Fort Meade	Cantonment Area Roads	\$16,500,000
	Joint Base Andrews	PAR Relocate Haz Cargo Pad and EOD Range	\$37,000,000
		Child Development Center	\$13,000,000
New Mexico	Holloman AFB	MQ-9 FTU Ops Facility	\$85,000,000
	White Sands	Information Systems Facility	\$40,000,000
New York	U.S. Military Academy	Engineering Center	\$95,000,000
		Parking Structure	\$65,000,000
Oregon	Klamath Falls IAP	Construct Indoor Range	\$8,000,000
Virginia	Joint Base Langley-Eustis	Construct Cyber Ops Facility	\$10,000,000
	Norfolk	Replace Hazardous Materials Warehouse	\$18,500,000
	Portsmouth	Replace Hazardous Materials Warehouse	\$22,500,000
		Ships Maintenance Facility	\$26,120,000
Wisconsin	Truax Field	Construct Small Arms Range	\$8,000,000

The States' motion also concerns the construction of seven border barrier projects in California and New Mexico. These include: San Diego Project 4, San Diego Project 11, El Centro Project 5, El Centro Project 9, Yuma Project 6, El Paso Project 2, and El Paso Project 8. Defendants' actions with respect to these 17 defunded projects and 7 border barrier projects are referred to herein as "Defendants' 2808 Actions."

2. On March 25 and May 9, 2019, citing 10 U.S.C. section 284, DOD committed to the construction of several border barrier projects, including El Paso Project 1 in New Mexico and El Centro Project 1 in California. These border barrier projects are referred to herein as "Defendants' 284 Actions."

3. Defendants' 2808 Actions are ultra vires and violate the Administrative Procedure Act because they exceed congressional authority.

4. Defendants' 2808 Actions violate the Administrative Procedure Act because they are arbitrary and capricious.

5. Defendants' 2808 Actions violate the United States Constitution's separation of powers principles.

6. Defendants' 2808 Actions violate the United States Constitution's Appropriations Clause.

7. Defendants' 2808 Actions violate the United States Constitution's Presentment Clause.

8. Defendants' 2808 Actions and Defendants 284 Actions violate the National Environmental Policy Act.

Having entered judgment in favor of the States and against Defendants on the above, the Court hereby ORDERS the following relief:

### DECLARATION

The Court finds declaratory relief under 28 U.S.C. § 2201 appropriate in this case. It is hereby DECLARED that Defendants' 2808 Actions are unlawful and unconstitutional because they: (i) exceed the congressional authority conferred to the Executive Branch in violation of the Administrative Procedure Act and are ultra vires; (ii) violate the Administrative Procedure Act because they are arbitrary and capricious; (iii) violate the United States Constitution's separation

of powers principles; (iv) violate the United States Constitution's Appropriations Clause; and (v) violate the United States Constitution's Presentment Clause. The Court further declares that Defendants' 2808 and 284 Actions violate the National Environmental Policy Act.

### PERMANENT INJUNCTION

The Court also finds that each of the necessary elements for issuing a permanent injunction are met. In particular, the Court finds that the States have succeeded on the merits of their claims and that absent an injunction, the States would suffer irreparable injury; the balance of equities favor the States; and the requested relief is in the public interest. Pursuant to Federal Rule of Civil Procedure 65, it is now ORDERED that Defendants ARE HEREBY RESTRAINED AND ENJOINED from committing, performing, directly or indirectly, the following acts:

1. Diverting any funding or resources from the 17 military construction projects in the States identified in the chart above under 10 U.S.C. § 2808 toward the construction of any barrier or border-related infrastructure and/or project along the United States-Mexico border.
2. Obligating any funding, including but not limited to, the awarding of and/or entering into any contracts, toward the construction of any border barrier or border-related infrastructure and/or project along in California or New Mexico through the use of any funds diverted under 10 U.S.C. § 2808.
3. Taking any further action related to the construction of any barrier along the United States-Mexico border in California or New Mexico under 10 U.S.C. § 2808 and 10 U.S.C. § 284 unless and until Defendants comply with the National Environmental Policy Act, 42 U.S.C. sections 4321-4370m-12.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

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THE HONORABLE HAYWOOD S. GILLIAM, JR.